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SENATE BILL 817

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO SUPPORT ENFORCEMENT; AUTHORIZING THE HUMAN SERVICES DEPARTMENT TO ISSUE ORDERS FOR SUPPORT AND ORDERS OF WITHHOLDING, TO IMPOSE LIENS, TO DETERMINE PARENTAGE, TO IMPOSE CIVIL PENALTIES AND TO TAKE CERTAIN OTHER RELATED ACTIONS; TRANSFERRING CHILD SUPPORT HEARING OFFICERS FROM THE DISTRICT COURTS TO THE HUMAN SERVICES DEPARTMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 27-2-27 NMSA 1978 (being Laws 1981, Chapter 90, Section 1, as amended) is amended to read:

"27-2-27. SINGLE STATE AGENCY-- POWERS AND DUTIES. --

A. The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the

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1 following duties and powers:

2 [A.] (1) establish the paternity of a child in
3 the case of the child born out of wedlock with respect to whom
4 an assignment of support rights has been executed in favor of
5 the department;

6 [B.] (2) establish an order of support for
7 children receiving ~~[aid to families with dependent children]~~
8 temporary assistance for needy families and, at the option of
9 the department, for the spouse or former spouse with whom such
10 children are living, but only if a support obligation has been
11 established with respect to such spouse or former spouse, for
12 whom no order of support ~~[presently]~~ currently exists and seek
13 modification, based upon the noncustodial parent's ability to
14 pay, of existing orders in which the support order is
15 inadequate to properly care for the child and the spouse or
16 former spouse with whom the child is living;

17 [C.] (3) enforce as the real party in interest
18 any existing order for the support of children who are
19 receiving ~~[aid to families with dependent children]~~ temporary
20 assistance for needy families or of the spouse or former spouse
21 with whom such children are living; ~~[and~~

22 [D.] (4) provide services to non-aid families
23 with dependent children in the establishment and enforcement of
24 paternity and child support obligations, including locating the
25 absent parent. For these services, the department is

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1 authorized to establish and collect fees, costs and charges
2 permitted or required by federal law or by regulations adopted
3 pursuant to that federal law; and

4 (5) pursuant to the provisions of the Child
5 Support Hearing Officer Act, issue and modify support orders
6 and orders of withholding, impose and remove liens, determine
7 parentage, impose civil penalties and take all other actions
8 necessary to ensure compliance with support obligations. The
9 department has concurrent jurisdiction with the district courts
10 in all actions brought:

11 (a) to enforce or modify support orders
12 resulting from a dissolution of marriage;

13 (b) pursuant to the Support Enforcement
14 Act;

15 (c) pursuant to the Mandatory Medical
16 Support Act;

17 (d) pursuant to the Uniform Interstate
18 Family Support Act; or

19 (e) pursuant to the Uniform Parentage
20 Act.

21 ~~[E.]~~ B. In all cases handled by the department
22 pursuant to the provisions of this section, the child support
23 enforcement division of the department and any attorney
24 employed by the division represent the department in
25 establishing, modifying and enforcing support obligations. "

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1 Section 2. Section 40-4-7 NMSA 1978 (being Laws 1901,
2 Chapter 62, Section 27, as amended) is amended to read:

3 "40-4-7. PROCEEDINGS--SPOUSAL SUPPORT--SUPPORT OF
4 CHILDREN--DIVISION OF PROPERTY.--

5 A. In any proceeding for the dissolution of
6 marriage, division of property, disposition of children or
7 spousal support, the court may make and enforce by attachment
8 or otherwise an order to restrain the use or disposition of the
9 property of either party or for the control of the children or
10 to provide for the support of either party during the pendency
11 of the proceeding, as in its discretion may seem just and
12 proper. The court may make an order, relative to the expenses
13 of the proceeding, as will ensure either party an efficient
14 preparation and presentation of his case.

15 B. On final hearing, the court:

16 (1) may allow either party such a reasonable
17 portion of the spouse's property or such a reasonable sum of
18 money to be paid by either spouse either in a single sum or in
19 installments, as spousal support as under the circumstances of
20 the case may seem just and proper, including a court award of:

21 (a) rehabilitative spousal support that
22 provides the receiving spouse with education, training, work
23 experience or other forms of rehabilitation that increases the
24 receiving spouse's ability to earn income and become self-
25 supporting. The court may include a specific rehabilitation

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1 plan with its award of rehabilitative spousal support and may
2 condition continuation of the support upon compliance with that
3 plan;

4 (b) transitional spousal support to
5 supplement the income of the receiving spouse for a limited
6 period of time; provided that the period shall be clearly
7 stated in the court's final order;

8 (c) spousal support for an indefinite
9 duration;

10 (d) a single sum to be paid in one or
11 more installments that specifies definite amounts, subject only
12 to the death of the receiving spouse; or

13 (e) a single sum to be paid in one or
14 more installments that specifies definite amounts, not subject
15 to any contingencies, including the death of the receiving
16 spouse;

17 (2) may:

18 (a) modify and change any order in
19 respect to spousal support awarded pursuant to the provisions
20 of Subparagraph (a), (b) or (c) of Paragraph (1) of this
21 subsection whenever the circumstances render such change
22 proper; or

23 (b) designate spousal support awarded
24 pursuant to the provisions of Subparagraph (a) or (b) of
25 Paragraph (1) of this subsection as nonmodifiable with respect

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1 to the amount or duration of the support payments;

2 (3) may set apart out of the property or
3 income of the respective parties such portion for the
4 maintenance and education of:

5 (a) their unemancipated minor children
6 as may seem just and proper; or

7 (b) their children until the children's
8 graduation from high school if the children are emancipated
9 only by age, are under nineteen and are attending high school;
10 and

11 (4) may make such an order for the
12 guardianship, care, custody, maintenance and education of the
13 minor children, or with reference to the control of the
14 property of the respective parties to the proceeding, or with
15 reference to the control of the property decreed or fund
16 created by the court for the maintenance and education of the
17 minor children, as may seem just and proper.

18 C. The court may order and enforce the payment of
19 support for the maintenance and education after high school of
20 emancipated children of the marriage pursuant to a written
21 agreement between the parties.

22 D. An award of spousal support made pursuant to the
23 provisions of Subparagraph (a), (b), (c) or (d) of Paragraph
24 (1) of Subsection B of this section shall terminate upon the
25 death of the receiving spouse, unless the court order of

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1 spousal support provides otherwise.

2 E. When making determinations concerning spousal
3 support to be awarded pursuant to the provisions of Paragraph
4 (1) or (2) of Subsection B of this section, the court shall
5 consider:

6 (1) the age and health of and the means of
7 support for the respective spouses;

8 (2) the current and future earnings and the
9 earning capacity of the respective spouses;

10 (3) the good-faith efforts of the respective
11 spouses to maintain employment or to become self-supporting;

12 (4) the reasonable needs of the respective
13 spouses, including:

14 (a) the standard of living of the
15 respective spouses during the term of the marriage;

16 (b) the maintenance of medical insurance
17 for the respective spouses; and

18 (c) the appropriateness of life
19 insurance, including its availability and cost, insuring the
20 life of the person who is to pay support to secure the
21 payments, with any life insurance proceeds paid on the death of
22 the paying spouse to be in lieu of further support;

23 (5) the duration of the marriage;

24 (6) the amount of the property awarded or
25 confirmed to the respective spouses;

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1 (7) the type and nature of the respective
2 spouses' assets; provided that potential proceeds from the sale
3 of property by either spouse shall not be considered by the
4 court, unless required by exceptional circumstances and the
5 need to be fair to the parties;

6 (8) the type and nature of the respective
7 spouses' liabilities;

8 (9) income produced by property owned by the
9 respective spouses; and

10 (10) agreements entered into by the spouses in
11 contemplation of the dissolution of marriage or legal
12 separation.

13 F. The court shall retain jurisdiction over
14 proceedings involving periodic spousal support payments when
15 the parties have been married for twenty years or more prior to
16 the dissolution of the marriage, unless the court order or
17 decree specifically provides that no spousal support shall be
18 awarded.

19 G. The court may modify and change any order or
20 agreement merged into an order in respect to the guardianship,
21 care, custody, maintenance or education of the children
22 whenever circumstances render such change proper. Except for
23 support-related actions brought before a child support hearing
24 officer pursuant to the Child Support Hearing Officer Act, the
25 district court shall have exclusive jurisdiction of all matters

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1 pertaining to the guardianship, care, custody, maintenance and
2 education of the children until the parents' obligation of
3 support for their children terminates [~~The district court~~] and
4 shall also have exclusive, continuing jurisdiction with
5 reference to the property decreed or funds created for the
6 children's maintenance and education. "

7 Section 3. Section 40-4-7.1 NMSA 1978 (being Laws 1993,
8 Chapter 110, Section 1) is amended to read:

9 "40-4-7.1. USE OF LIFE INSURANCE POLICY AS SECURITY. --

10 A. In any proceeding brought pursuant to the
11 provisions of Section 40-4-7 NMSA 1978 or in any other
12 proceeding for the division of property or spousal or child
13 support brought pursuant to the provisions of Chapter 40 NMSA
14 1978, the court or child support hearing officer may require
15 either party or both parties to the proceeding to maintain the
16 minor children of the parties or a spouse or former spouse as
17 beneficiaries on a life insurance policy as security for the
18 payment of:

- 19 (1) support for the benefit of the minor
20 children;
- 21 (2) spousal support; or
- 22 (3) the cost to equalize a property division
23 in the event of the death of the insured on the life insurance
24 policy.

25 B. The court or child support hearing officer may

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1 also allocate the cost of the premiums of the life insurance
2 policy between the parties. "

3 Section 4. Section 40-4-11.4 NMSA 1978 (being Laws 1990,
4 Chapter 58, Section 1, as amended) is amended to read:

5 "40-4-11.4. MODIFICATION OF CHILD SUPPORT ORDERS--
6 EXCHANGE OF FINANCIAL INFORMATION. --

7 A. A court or a child support hearing officer in an
8 action brought pursuant to the Child Support Hearing Officer
9 Act may modify a child support obligation upon a showing of
10 material and substantial changes in circumstances subsequent to
11 the adjudication of the pre-existing order. There shall be a
12 presumption of material and substantial changes in
13 circumstances if application of the child support guidelines in
14 Section 40-4-11.1 NMSA 1978 would result in a deviation upward
15 or downward of more than twenty percent of the existing child
16 support obligation and the petition for modification is filed
17 more than one year after the filing of the pre-existing order.

18 B. All child support orders shall contain a
19 provision for the annual exchange of financial information by
20 the obligor and obligee upon a written request by either party.
21 The financial information to be furnished shall include:

22 (1) federal and state tax returns, including
23 all schedules, for the year preceding the request;

24 (2) W-2 statements for the year preceding the
25 request;

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1 (3) Internal Revenue Service Form 1099s for
2 the year preceding the request;

3 (4) work-related daycare statements for the
4 year preceding the request;

5 (5) dependent medical insurance premiums for
6 the year preceding the request; and

7 (6) wage and payroll statements for four
8 months preceding the request.

9 For the purposes of this subsection, the wages of a
10 subsequent spouse may be omitted from the financial information
11 provided by either the obligor or the obligee."

12 Section 5. Section 40-4-11.5 NMSA 1978 (being Laws 1990,
13 Chapter 58, Section 2, as amended) is amended to read:

14 "40-4-11.5. MODIFICATION OF CHILD SUPPORT ORDERS IN CASES
15 ENFORCED BY THE STATE TITLE IV-D AGENCY. --

16 A. For child support cases being enforced by the
17 human services department acting as the state's Title IV-D
18 child support enforcement agency as provided in Section 27-2-27
19 NMSA 1978, the department shall implement a process for the
20 periodic review of child support orders that shall include:

21 (1) a review of support orders every three
22 years upon the request of either the obligor or obligee or, if
23 there is an assignment of support rights pursuant to the Public
24 Assistance Act, upon the request of the department or of either
25 the obligor or obligee;

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1 (2) notification by the department of its
2 review to the obligor and obligee; and

3 (3) authorization to require financial
4 information from the obligor and the obligee to determine
5 whether the support obligation should be presented to the court
6 or a child support hearing officer in an action brought
7 pursuant to the Child Support Hearing Officer Act for
8 modification.

9 B. In carrying out [its] duties under this section,
10 the secretary of human services or the secretary's authorized
11 representative has the power to issue subpoenas to compel:

12 (1) [~~to compel~~] the attendance of the obligor
13 or the obligee at a hearing on the child support order;

14 (2) [~~to compel~~] production by the obligor or
15 the obligee of financial or wage information, including federal
16 or state tax returns;

17 (3) [~~to compel~~] the obligor or the obligee to
18 disclose the location of employment of the payor party; and

19 (4) [~~to compel~~] the employer of the obligor or
20 the obligee to disclose information relating to the employee's
21 wages.

22 C. A subpoena issued by the human services
23 department under this section shall state with reasonable
24 certainty the nature of the information required, the time and
25 place where the information shall be produced, whether the

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1 subpoena requires the attendance of the person subpoenaed or
2 only the production of information and records and the
3 consequences of failure to obey the subpoena.

4 D. A subpoena issued by the human services
5 department under this section shall be served upon the person
6 to be subpoenaed or, at the option of the secretary or the
7 secretary's authorized representative, by certified mail
8 addressed to the person at his last known address. The service
9 of the subpoena shall be at least ten days prior to the
10 required production of the information or the required
11 appearance. If the subpoena is served by certified mail, proof
12 of service is the affidavit of mailing. After service of a
13 subpoena upon a person, if the person neglects or refuses to
14 comply with the subpoena, the department may apply to the
15 district court of the county where the subpoena was served or
16 the county where the subpoena was responded to for an order
17 compelling compliance. Failure of the person to comply with
18 the district court's order shall be punishable as contempt.

19 E. If a review by the human services department
20 results in a finding that a child support order should be
21 modified in accordance with the guidelines, it should be
22 presented to the court or child support hearing officer for
23 modification and the obligor and the obligee shall be notified of
24 their respective rights and shall have thirty days to respond to
25 the department's finding. The right to seek modification shall

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1 rest with the department in the case of obligations being
2 enforced as a result of a public assistance recipient's
3 assignment of support rights to the state as provided in the
4 federal Social Security Act, 42 U.S.C. 602(a)(26).

5 F. At the request of the obligor or the obligee or
6 upon the filing of a motion to modify child support, the human
7 services department shall furnish any information it has obtained
8 in its review process regarding wages or other information
9 pertaining to the obligor or the obligee.

10 G. Nothing in this section shall be construed to
11 restrict the right of either party to petition the court or the
12 human services department pursuant to the Child Support Hearing
13 Officer Act to modify a child support obligation. The human
14 services department shall not be required to conduct a review of
15 any party's obligation more than once every three years. "

16 Section 6. Section 40-4-11.6 NMSA 1978 (being Laws 1991,
17 Chapter 206, Section 3) is amended to read:

18 "40-4-11.6. ATTACHMENT OF GUIDELINE WORKSHEET TO ORDER. -- A
19 completed child support obligation guideline worksheet shall be
20 attached to all orders that establish or modify child support.
21 The completed worksheet shall be signed by the obligor and
22 obligee or their attorneys. The completed worksheet shall be
23 incorporated as part of the child support order. The worksheet
24 shall also be attached to the child support order unless the
25 court or a child support hearing officer in an action brought

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1 pursuant to the Child Support Hearing Officer Act decrees that
2 the worksheet be sealed or unless the obligor and obligee agree
3 that it should be sealed. "

4 Section 7. Section 40-4-17 NMSA 1978 (being Laws 1947,
5 Chapter 16, Section 7) is amended to read:

6 "40-4-17. MOTION TO REMOVE LIEN--BOND. --The district court
7 or a child support hearing officer in an action brought pursuant
8 to the Child Support Hearing Officer Act upon motion made in the
9 cause wherein the decree was rendered may remove the liens
10 created by [~~this Act~~] Sections 40-4-12 through 40-4-19 NMSA 1978
11 upon notice and upon good cause shown from any or all of the real
12 estate subject to [~~such~~] the lien [~~and~~]. The judge or child
13 support hearing officer, in his discretion, upon the removal of
14 [~~such~~] the lien, may require bond for the faithful performance of
15 the payment of alimony or support money in accordance with the
16 decree. "

17 Section 8. Section 40-4-20 NMSA 1978 (being Laws 1901,
18 Chapter 62, Section 31, as amended) is amended to read:

19 "40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE
20 ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--
21 DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF
22 PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION OF
23 MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY. --

24 A. The failure to divide or distribute property on
25 the entry of a decree of dissolution of marriage or of separation

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1 shall not affect the property rights of either the husband or
2 wife, and either may subsequently institute and prosecute a suit
3 for division and distribution or with reference to any other
4 matter pertaining thereto that could have been litigated in the
5 original proceeding for dissolution of marriage or separation.

6 B. Upon the filing and service of a petition for
7 dissolution of marriage, separation, annulment, division of
8 property or debts, spousal support, child support or
9 determination of paternity pursuant to the provisions of Chapter
10 40, Article 4 or 11 NMSA 1978, if a party to the action dies
11 during the pendency of the action, but prior to the entry of a
12 decree granting dissolution of marriage, separation, annulment or
13 determination of paternity, the proceedings for the
14 determination, division and distribution of marital property
15 rights and debts, distribution of spousal or child support or
16 determination of paternity shall not abate. The court or a child
17 support hearing officer in an action brought pursuant to the
18 Child Support Hearing Officer Act shall conclude the proceedings
19 as if both parties had survived. The court or child support
20 hearing officer may allow the spouse or any children of the
21 marriage support as if the decedent had survived, pursuant to the
22 provisions of Chapter 40, Article 4 or 11 NMSA 1978. In
23 determining the support, the court shall, in addition to the
24 factors listed in Chapter 40, Article 4 NMSA 1978, consider the
25 amount and nature of the property passing from the [~~decedent~~]

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1 decendent to the person for whom the support would be paid,
2 whether by will or otherwise. "

3 Section 9. Section 40-4A-1 NMSA 1978 (being Laws 1985,
4 Chapter 105, Section 1) is amended to read:

5 "40-4A-1. SHORT TITLE. -- ~~[This act]~~ Chapter 40, Article 4A
6 NMSA 1978 may be cited as the "Support Enforcement Act". "

7 Section 10. Section 40-4A-2 NMSA 1978 (being Laws 1985,
8 Chapter 105, Section 2, as amended) is amended to read:

9 "40-4A-2. DEFINITIONS. -- As used in the Support Enforcement
10 Act:

11 [~~A. "authorized quasi-judicial officer" means a~~
12 ~~person appointed by the court pursuant to Rule 53(a) of the Rules~~
13 ~~of Civil Procedure for the District Courts;~~]

14 A. "adjudicatory body" means:

15 (1) the district court if the action is filed
16 with or the order is issued by the court; or

17 (2) a child support hearing officer employed by
18 the department if the department is exercising jurisdiction
19 pursuant to the Child Support Hearing Officer Act and the action
20 is filed with or the order is issued by the hearing officer;

21 B. "consumer reporting agency" means any person who,
22 for monetary fees, dues or on a cooperative nonprofit basis,
23 regularly engages in whole or in part in the practice of
24 assembling or evaluating consumer credit information or other
25 information on consumers for the purpose of furnishing consumer

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1 reports to third parties and who uses any means or facility of
2 interstate commerce for the purpose of preparing or furnishing
3 consumer reports;

4 C. "delinquency" means any payment under an order for
5 support which has become due and is unpaid;

6 D. "department" means the human services department;

7 E. "income" means any form of periodic payment to an
8 obligor, regardless of source, including [~~but not limited to~~]
9 wages, salary, commission, compensation as an independent
10 contractor, workers' compensation benefits, disability benefits,
11 annuity and retirement benefits or other benefits, bonuses,
12 interest or any other payments made by any person, but does not
13 include:

14 (1) any amounts required by law to be withheld,
15 other than creditor claims, including [~~but not limited to~~]
16 federal, state and local taxes, social security and other
17 retirement and disability contributions;

18 (2) union dues;

19 (3) any amounts exempted by federal law; or

20 (4) public assistance payments;

21 F. "notice of delinquency" means the notice of
22 delinquency as provided for in Section 40-4A-4 NMSA 1978;

23 G. "notice to withhold income" means a notice that
24 requires the payor to withhold from the obligor money necessary
25 to meet the obligor's duty under an order for support and, in the

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1 event of a delinquency, requires the payor to withhold an
2 additional amount to be applied towards the reduction of the
3 delinquency;

4 H. "obligor" means the person who owes a duty to make
5 payments under an order for support;

6 I. "obligee" means any person who is entitled to
7 receive support under an order for support or that person's legal
8 representative;

9 J. "order for support" means any order which has been
10 issued by any judicial, quasi-judicial or administrative entity
11 of competent jurisdiction of any state and which order provides
12 for:

13 (1) periodic payment of funds for the support of
14 a child or a spouse;

15 (2) modification or resumption of payment of
16 support;

17 (3) payment of delinquency; or

18 (4) reimbursement of support;

19 K. "payor" means any person or entity who provides
20 income to an obligor;

21 L. "person" means an individual, corporation,
22 partnership, governmental agency, public office or other entity;
23 and

24 M "public office" means the state disbursement unit
25 of the department as defined in Section 454B of the federal

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1 Social Security Act. "

2 Section 11. Section 40-4A-4 NMSA 1978 (being Laws 1985,
3 Chapter 105, Section 4, as amended) is amended to read:

4 "40-4A-4. NOTICE OF DELINQUENCY. --

5 A. When an obligor accrues a delinquency, the obligee
6 or public office may prepare and serve upon the obligor a copy of
7 a verified notice of delinquency. The income of a person with a
8 support obligation imposed by a support order issued or modified
9 in the state before January 1, 1994, if not otherwise subject to
10 immediate withholding under Section 40-4A-4.1 NMSA 1978, shall
11 become subject to immediate withholding as provided in Section
12 40-4A-4.1 NMSA 1978 if arrearages occur, without the need for a
13 judicial or administrative hearing.

14 ~~[B. If the date upon which payment is due under an~~
15 ~~order for support is not stated in the order for support, the due~~
16 ~~date shall be deemed to be the last day of the month.]~~

17 ~~C.]~~ B. The notice of delinquency shall:

18 (1) recite those terms of the order for support
19 which enumerate the support obligation;

20 (2) contain a current computation of the period
21 and total amount of the delinquency;

22 (3) inform the obligor of the amount to be
23 withheld;

24 (4) inform the obligor of the procedures
25 available to contest the income withholding on the grounds that

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1 the withholding or the amount withheld is improper due to a
2 mistake of fact;

3 (5) state that, unless the obligor complies with
4 the procedures to contest the income withholding, a notice to
5 withhold income shall be served upon the payor;

6 (6) state that the notice to withhold income
7 shall be applicable to any current or subsequent payor; and

8 (7) state the name and address of the public
9 office to which withheld income shall be sent.

10 [~~D.~~] C. The original notice of delinquency shall be
11 filed with the [~~clerk of the district court~~] adjudicatory body.

12 [~~E.~~] D. Service of the notice of delinquency upon the
13 obligor shall be effected by sending the notice by prepaid
14 certified mail addressed to the obligor at his last known address
15 or by any method provided by law for service of a summons. Proof
16 of service shall be filed with the [~~clerk of the district court~~]
17 adjudicatory body. "

18 Section 12. Section 40-4A-4.1 NMSA 1978 (being Laws 1990,
19 Chapter 30, Section 1, as amended) is amended to read:

20 "40-4A-4.1. IMMEDIATE CHILD SUPPORT INCOME WITHHOLDING. --

21 A. In any [~~judicial~~] proceeding in which child
22 support is ordered, modified or enforced and which proceeding is
23 brought or enforced pursuant to Title IV-D of the federal Social
24 Security Act as provided in Section 27-2-27 NMSA 1978, the income
25 of the [~~support~~] obligor shall be subject to immediate income

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1 withholding regardless of the existence of any child support
2 arrearage or delinquency. Effective January 1, 1994, in
3 proceedings in which child support services are not being
4 provided pursuant to Title IV-D and the initial child support
5 order is issued in the state on or after January 1, 1994, the
6 income of the [~~support~~] obligor shall be subject to immediate
7 income withholding regardless of the existence of any child
8 support arrearage or delinquency.

9 B. As part of the court or administrative order
10 establishing, modifying or enforcing the child support
11 obligation, the [~~court~~] adjudicatory body shall issue the order
12 to withhold.

13 C. The order to withhold shall state:

14 (1) the style, docket number and [~~court~~]
15 adjudicatory body having jurisdiction of the cause;

16 (2) the name, address and, if available, the
17 social security number of the obligor;

18 (3) the amount and duration of the child support
19 payments. If any of the ordered amount is toward satisfaction of
20 an arrearage or delinquency up to the date of the order, the
21 amount payable to current and past-due support shall be
22 specified, together with the total amount of the delinquency or
23 arrearage, including judgment interest, if any;

24 (4) the name and date of birth of the child for
25 whom support is ordered and the name of the obligee;

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1 (5) the name and address of the person or agency
2 to whom the payment is to be made, together with the agency's
3 internal case number; and

4 (6) any other information deemed necessary to
5 effectuate the order.

6 D. All Title IV-D payments shall be made through the
7 public office. Effective October 1, 1998, all non-Title IV-D
8 payments shall be made through the public office [~~to be effective~~
9 ~~on October 1, 1998~~].

10 E. The maximum amount withheld pursuant to this
11 section and any other garnishment shall not exceed fifty percent
12 of the obligor's income.

13 F. The order of a withholding shall be mailed by the
14 Title IV-D agency or the [~~support~~] obligee, obligee's attorney or
15 [~~court~~] adjudicatory body by certified mail to the payor. The
16 payor shall pay over income as provided by and in compliance with
17 the procedures of Section 40-4A-8 NMSA 1978.

18 G. The [~~court~~] adjudicatory body may provide an
19 exception to the immediate income withholding required by this
20 section if it finds good cause for not ordering immediate
21 withholding. The burden shall be on the party claiming good
22 cause to raise the issue and demonstrate the existence of good
23 cause to the [~~court~~] adjudicatory body. In the event of a
24 finding of good cause, the [~~court~~] adjudicatory body shall make a
25 written finding in the order specifying the reasons or

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1 circumstances justifying the good-cause exception and why income
2 withholding would not be in the best interest of the child. If
3 the order is one modifying a support obligation and immediate
4 income withholding is not ordered, the order shall include a
5 finding that the obligor has timely paid support in the past.
6 The order shall provide that the obligor shall be subject to
7 withholding if a one-month ~~[support]~~ delinquency accrues.

8 H. The ~~[court]~~ adjudicatory body shall make an
9 exception to the immediate income withholding required by this
10 section if the parties to the proceeding enter into a written
11 agreement providing for alternative means of satisfying the child
12 support obligation. Such an agreement shall be incorporated into
13 the order of the ~~[court]~~ adjudicatory body. For the purposes of
14 this subsection, the ~~[support]~~ obligee shall be considered to be
15 the department in the case of child support obligations that the
16 state is enforcing pursuant to an assignment of support rights to
17 it as a condition of the assignor's receipt of public assistance.
18 The agreement shall contain the signatures of a representative of
19 the department and the custodial parent.

20 I. Notwithstanding the provisions of Subsection G of
21 this section, immediate income withholding shall take place if
22 the ~~[child support]~~ obligor so requests. The notice to withhold
23 shall be filed with the ~~[clerk of the district court]~~
24 adjudicatory body and the requirements of Subsection C of this
25 section, Subsections ~~[D, E and F]~~ C, D and E of Section 40-4A-5

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1 and Sections 40- 4A-6, 40- 4A-8, 40- 4A- 10 and 40- 4A- 11 NMSA 1978
2 shall apply.

3 J. ~~[A-court]~~ An adjudicatory body shall order a wage
4 withholding effective on the date on which a custodial parent
5 requests such withholding to begin if the ~~[court]~~ adjudicatory
6 body determines, in accordance with such procedures and standards
7 as it may establish, that the request should be approved,
8 notwithstanding:

9 (1) the absence of a ~~[support]~~ delinquency of at
10 least one month;

11 (2) a finding of good cause under Subsection G
12 of this section; or

13 (3) an agreement under Subsection H of this
14 section.

15 K. The standards and procedures established for
16 purposes of Subsection J of this section shall provide for the
17 protection of the due process rights of the ~~[support]~~ obligor,
18 appropriate notices and the right to a hearing under the Support
19 Enforcement Act.

20 L. Wages not subject to withholding under Subsection
21 J of this section shall still be subject to withholding on an
22 earlier date as provided by law.

23 M Notwithstanding any other provision of this
24 section, wages not subject to withholding because of a finding of
25 good cause under Subsection G of this section shall not be

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1 subject to withholding at the request of a custodial parent
2 unless the ~~[court]~~ adjudicatory body changes its determination of
3 good cause not to initiate immediate wage withholding.

4 N. In the event ~~[a child support]~~ an obligor accrues
5 a delinquency in an amount equal to at least one month's support
6 obligation and notwithstanding any previous agreement or ~~[court]~~
7 adjudicatory body finding to the contrary, income withholding
8 shall issue against the ~~[support]~~ obligor and the procedures set
9 out in Section 40-4A-4 NMSA 1978 shall be followed. Such
10 withholding shall terminate only upon the termination of all
11 obligations imposed by the order of support and payment in full
12 of all enforceable ~~[child support]~~ delinquencies. "

13 Section 13. Section 40-4A-5 NMSA 1978 (being Laws 1985,
14 Chapter 105, Section 5, as amended) is amended to read:

15 "40-4A-5. NOTICE TO WITHHOLD INCOME. --

16 A. The obligee or public office shall file an
17 affidavit with the ~~[clerk of the district court]~~ adjudicatory
18 body showing that notice of delinquency has been duly served upon
19 the obligor.

20 B. Upon filing of the affidavit required by
21 Subsection A of this section, the notice to withhold income shall
22 be filed with the ~~[clerk of the district court]~~ adjudicatory body
23 and served upon the payor by certified mail or personal delivery,
24 and proof of service shall be filed with the ~~[clerk of the~~
25 ~~district court]~~ adjudicatory body.

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1 C. A conformed copy of the notice to withhold income
2 shall be mailed to the obligor at his last known address.

3 D. The notice to withhold income shall be verified by
4 the obligee or public office and shall:

5 (1) state the amount of income to be withheld
6 from the obligor; provided, however, the amount to be applied to
7 satisfy the monthly obligation under the order for support, the
8 amount of the delinquency which is set forth in the notice of
9 delinquency and the amount to be applied to reduce the
10 delinquency set forth in the notice of delinquency shall be
11 stated separately;

12 (2) state that payments due from multiple
13 obligors may be combined into one remittance so long as each
14 withholding is separately identified;

15 (3) state that the maximum amount of an
16 obligor's income subject to withholding pursuant to the Support
17 Enforcement Act and pursuant to any garnishment shall not exceed
18 fifty percent;

19 (4) state the duties of the payor as set forth
20 in Section 40-4A-8 NMSA 1978; and

21 (5) require that all payments be made through
22 the public office to ensure accurate recordkeeping.

23 E. The termination of the obligations imposed by the
24 order [of] for support and payment in full of any delinquency
25 shall revoke the notice to withhold income. "

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1 Section 14. Section 40-4A-6 NMSA 1978 (being Laws 1985,
2 Chapter 105, Section 6) is amended to read:

3 "40-4A-6. AMOUNT OF INCOME SUBJECT TO WITHHOLDING. --

4 A. The income of an obligor shall be subject to
5 withholding in an amount:

6 (1) equal to the monthly support obligation set
7 forth in the order for support; and

8 (2) in the event of a delinquency, the
9 additional amount of twenty percent of the monthly support
10 obligation set forth in the order for support or such amount as
11 the ~~court~~ adjudicatory body may order after notice and hearing,
12 until payment in full of any delinquency set forth in the notice
13 of delinquency.

14 B. The maximum amount of an obligor's income ~~which~~
15 that may be subject to withholding pursuant to the Support
16 Enforcement Act and pursuant to any garnishment shall not exceed
17 fifty percent. "

18 Section 15. Section 40-4A-7 NMSA 1978 (being Laws 1985,
19 Chapter 105, Section 7, as amended) is amended to read:

20 "40-4A-7. PROCEDURE TO AVOID INCOME WITHHOLDING. -- Except as
21 provided in Section 40-4A-4.1 NMSA 1978, the obligor may contest
22 the notice to withhold income by filing a petition with the
23 ~~[clerk of the district court]~~ adjudicatory body within twenty
24 days after service of the notice of delinquency. Grounds for the
25 contest shall be limited to a dispute concerning the existence or

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1 amount of the delinquency or noncompliance with the Support
2 Enforcement Act. The [~~clerk of the district court~~] adjudicatory
3 body shall notify the obligor and the obligee or public office,
4 as appropriate, of the time and place of the hearing on the
5 petition. The [~~court~~] adjudicatory body shall hold the hearing
6 pursuant to the provisions of Section 40-4A-9 NMSA 1978. "

7 Section 16. Section 40-4A-9 NMSA 1978 (being Laws 1985,
8 Chapter 105, Section 9, as amended) is amended to read:

9 "40-4A-9. PETITIONS TO MODIFY, SUSPEND OR TERMINATE NOTICE
10 OF WITHHOLDING. --

11 A. When an obligor files a petition pursuant to
12 Section 40-4A-7 NMSA 1978, the [~~court~~] adjudicatory body, after
13 due notice to all parties, shall hear and resolve the matter no
14 later than forty-five days following the service of the notice of
15 delinquency. [~~Where~~] When the [~~court~~] adjudicatory body cannot
16 promptly resolve the issues alleged in the petition, the [~~court~~]
17 adjudicatory body may order immediate execution of an amended
18 notice to withhold income as to any undisputed amounts and may
19 continue the hearing on the disputed issues for such reasonable
20 length of time as required under the circumstances. Failure to
21 meet the time requirements shall not constitute a defense to the
22 notice to withhold income.

23 B. At any time, an obligor or obligee or the public
24 office may petition the [~~court~~] adjudicatory body to:

25 (1) modify, suspend or terminate the notice to

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1 withhold income because of a corresponding modification,
2 suspension or termination of the underlying order for support;

3 (2) modify the amount of income to be withheld
4 to increase the rate of payment of the delinquency; or

5 (3) suspend the notice to withhold income
6 because of the inability of the public office to deliver income
7 withheld to the obligee due to the obligee's failure to provide a
8 mailing address or other means of delivery.

9 C. Except for orders to withhold issued pursuant to
10 Section 40-4A-4.1 NMSA 1978, an obligor may petition the [court]
11 adjudicatory body at any time to terminate the withholding of
12 income because payments pursuant to the notice to withhold income
13 have been made for at least three years and all delinquencies
14 have been paid. The [court] adjudicatory body shall suspend the
15 notice to withhold income, absent good cause for denying the
16 petition. If the obligor subsequently becomes delinquent in
17 payment of the order for support, the obligee or public office
18 may serve another notice to withhold income by complying with all
19 requirements for notice and service pursuant to the Support
20 Enforcement Act. "

21 Section 17. Section 40-4A-11 NMSA 1978 (being Laws 1985,
22 Chapter 105, Section 11, as amended) is amended to read:

23 "40-4A-11. PENALTIES. --If any person willfully fails to
24 withhold or pay over income pursuant to the Support Enforcement
25 Act, willfully discharges, disciplines, refuses to hire or

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1 otherwise penalizes an obligor as prohibited by Subsection D of
2 Section 40-4A-8 NMSA 1978 or otherwise fails to comply with any
3 duty imposed by that act, the ~~[court]~~ adjudicatory body, upon due
4 notice and hearing:

5 A. shall impose a ~~[fine]~~ civil penalty against the
6 payor for the total amount that the payor willfully failed to
7 withhold or pay over;

8 B. shall order reinstatement of or award damages to
9 the obligor, or both, where the obligor has been discharged,
10 disciplined or otherwise penalized by the payor; or

11 C. may take such other action ~~[including action for~~
12 ~~contempt of court]~~ as may be appropriate, including, if the
13 adjudicatory body is a district court, an action for contempt of
14 court. "

15 Section 18. Section 40-4A-12 NMSA 1978 (being Laws 1985,
16 Chapter 105, Section 12, as amended) is amended to read:

17 "40-4A-12. INTERSTATE WITHHOLDING BY REGISTRATION OF
18 FOREIGN SUPPORT ORDER. --

19 A. Upon filing of a certified copy of a foreign order
20 for support containing an income withholding provision, the
21 ~~[clerk of the district court]~~ adjudicatory body shall docket the
22 case and inform the obligee of this action. The foreign order
23 for support filed in accordance with this section shall
24 constitute a legal basis for income withholding in this state.
25 Upon filing the order, together with a notice to withhold income,

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1 the order may be served upon the payor and obligor by prepaid
2 certified mail or by any method provided by law for service of
3 summons. The payor shall promptly notify the obligor of receipt
4 of service. Proof of service shall be filed with the [~~clerk of~~
5 ~~the district court~~] adjudicatory body. The obligor may contest
6 the validity or enforcement of the income withholding by filing a
7 petition to stay income withholding within twenty days after
8 service of the order and notice. If the obligor files a petition
9 to stay, the [~~court~~] adjudicatory body shall hear and resolve the
10 matter no later than forty-five days following service of the
11 order and notice to withhold. The procedure and grounds for
12 contesting the validity and enforcement of the income withholding
13 are the same as those available for contesting an income
14 withholding notice and order in this state. The obligor shall
15 give notice of the petition to stay to the support enforcement
16 agency providing services to the obligee, the person or agency
17 designated to receive payments in the income withholding notice
18 or, if there is no designated person or agency, the obligee.

19 B. Filing of the foreign order for support shall not
20 confer jurisdiction on the courts of this state for any purpose
21 other than income withholding.

22 C. If the obligor presents evidence that constitutes
23 a full or partial defense, the [~~court~~] adjudicatory body shall,
24 on the request of the obligee, continue the case to permit
25 further evidence relative to the defense to be adduced by either

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1 party; provided, however, the ~~[court]~~ adjudicatory body shall
2 order immediate execution as to any undisputed amounts as set
3 forth in Subsection A of Section 40-4A-9 NMSA 1978.

4 D. In addition to other procedural devices available
5 to a party, any party to the proceeding may adduce testimony of
6 witnesses in another state, including the parties and any of the
7 children, by deposition, written discovery, photographic
8 discovery such as videotaped depositions, telephone or
9 photographic means. The ~~[court]~~ adjudicatory body on its own
10 motion may direct that the testimony of a person be taken in
11 another state and may prescribe the manner and terms upon which
12 the testimony shall be taken.

13 E. ~~[A court of this state]~~ An adjudicatory body may
14 request the appropriate court or agency of another state to hold
15 a hearing to adduce evidence, to permit a deposition to be taken
16 before the court or agency or to order a party to produce or give
17 evidence under other procedures of that state and may request
18 that certified copies of the evidence adduced in compliance with
19 the request be forwarded to the ~~[court of this state]~~
20 adjudicatory body.

21 F. Upon request of a court or agency of another
22 state, ~~[a court of this state]~~ an adjudicatory body may order a
23 person in this state to appear at a hearing or deposition before
24 the ~~[court]~~ adjudicatory body to adduce evidence or to produce or
25 give evidence under other procedures available in this state. A

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1 certified copy of the evidence adduced, such as a transcript or
2 videotape, shall be forwarded by the [~~clerk of the district~~
3 ~~court~~] adjudicatory body to the requesting court or agency.

4 G. A person within this state may voluntarily testify
5 by statement or affidavit in this state for use in a proceeding
6 to obtain income withholding outside this state. "

7 Section 19. Section 40-4A-13 NMSA 1978 (being Laws 1985,
8 Chapter 105, Section 13) is amended to read:

9 "40-4A-13. EXPEDITED PROCESS. --

10 A. Any action for enforcement, establishment or
11 modification of a child support obligation shall be given
12 priority in scheduling for hearing. A hearing or trial shall be
13 scheduled before the [~~court or an authorized quasi-judicial~~
14 ~~officer~~] adjudicatory body within sixty days of the filing of the
15 request for hearing; provided, however, a petition to stay
16 service shall be resolved in accordance with Subsection A of
17 Section [~~9 of the Support Enforcement Act~~] 40-4A-9 NMSA 1978.

18 [~~B. The powers of an authorized quasi-judicial~~
19 ~~officer shall include at a minimum~~

20 (1) ~~authority to take testimony and establish a~~
21 ~~record;~~

22 (2) ~~authority to evaluate evidence and make~~
23 ~~initial decisions and recommendations; and~~

24 (3) ~~authority to accept voluntary~~
25 ~~acknowledgement of support liability and to approve stipulated~~

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1 ~~agreements to pay support.~~

2 ~~C. If a party seeks to invoke the contempt powers of~~
3 ~~the court, the matter shall not be delegated to an authorized~~
4 ~~quasi-judicial officer.~~

5 ~~D.] B.~~ Failure to meet the time requirements shall
6 not constitute a defense to the action for support. "

7 Section 20. A new section of the Child Support Hearing
8 Officer Act is enacted to read:

9 "[NEW MATERIAL] ADMINISTRATIVE HEARINGS-- CONCURRENT
10 JURISDICTION-- PROCEDURE-- CHILD SUPPORT HEARING OFFICERS. --

11 A. The department, through its child support hearing
12 officers, may issue and modify support orders and orders of
13 withholding; impose and remove liens; determine parentage; impose
14 civil penalties; and take all other actions concerning the
15 establishment and enforcement of support obligations in all
16 proceedings in which:

17 (1) the department, as the state's Title IV-D
18 agency, is acting as the enforcing party pursuant to an
19 assignment of support rights under Section 27-2-27 NMSA 1978;

20 (2) the department, pursuant to Section 27-2-27
21 NMSA 1978, is acting as the representative of a custodial parent
22 who is not receiving temporary assistance for needy families; and

23 (3) the department is the enforcing Title IV-D
24 party pursuant to a written request for enforcement of a support
25 obligation received from an agency in another state responsible

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1 for administering that state's federal Title IV-D program.

2 B. The department, in exercising power pursuant to
3 Subsection A of this section, has concurrent jurisdiction with
4 the district courts in all actions brought:

5 (1) to enforce or modify support orders
6 resulting from a dissolution of marriage;

7 (2) pursuant to the Support Enforcement Act;

8 (3) pursuant to the Mandatory Medical Support
9 Act;

10 (4) pursuant to the Uniform Interstate Family
11 Support Act; or

12 (5) pursuant to the Uniform Parentage Act.

13 C. In exercising the powers and jurisdiction granted
14 by this section, no action shall be taken by the department
15 except pursuant to a hearing before a child support hearing
16 officer. Except as provided otherwise by a statute relating to
17 the specific cause of action, in hearings before a child support
18 hearing officer:

19 (1) the child support hearing officer shall have
20 the adjudicatory powers possessed by district courts under the
21 Support Enforcement Act, the Mandatory Medical Support Act, the
22 Uniform Interstate Family Support Act, the Uniform Parentage Act
23 and any other law allowing the enforcement, establishment or
24 modification of support obligations by the state Title IV-D
25 agency;

1 (2) each party may be represented by counsel;

2 (3) the technical rules of evidence shall not
3 apply, but in ruling on the admissibility of evidence, the child
4 support hearing officer may require reasonable substantiation of
5 statements or records tendered, the accuracy or truth of which is
6 in reasonable doubt;

7 (4) the Rules of Civil Procedure for the
8 District Courts shall not apply, but the hearing shall be
9 conducted so that both complaints and defenses are amply and
10 fairly presented. To this end, the child support hearing officer
11 shall hear arguments, permit discovery, entertain and dispose of
12 motions, require written expositions of the case as the
13 circumstances justify and render a decision in accordance with
14 the law and the evidence presented and admitted;

15 (5) the child support hearing officer shall have
16 the power to preserve and enforce order during hearings;
17 administer oaths; issue subpoenas to compel the attendance and
18 testimony of witnesses, the production of books, papers,
19 documents and other evidence or the taking of depositions before
20 a designated individual competent to administer oaths; examine
21 witnesses; impose civil penalties and do all things conformable
22 to law that may be necessary to enable the child support hearing
23 officer to discharge the duties of his office effectively; and

24 (6) any person committing any of the following
25 acts may be assessed a civil penalty by the child support hearing

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1 officer or ~~may~~ be held accountable for his conduct in accordance
2 with the provisions of Subsection D of this section:

3 (a) disobedience of or resistance to any
4 lawful order or process;

5 (b) misbehavior during a hearing or so
6 near the place of the hearing as to obstruct it;

7 (c) failure to produce any pertinent book,
8 paper or document after having been ordered to do so;

9 (d) refusal to appear after having been
10 subpoenaed;

11 (e) refusal to take the oath or
12 affirmation as a witness; or

13 (f) refusal to be examined according to
14 law.

15 D. The child support hearing officer ~~may~~ certify to
16 the district court the fact that an act specified in
17 Subparagraphs (a) through (f) of Paragraph (6) of Subsection C of
18 this section was ~~committed~~ in that court. The court shall hold a
19 hearing and if the evidence so warrants ~~may~~ punish the offending
20 person in the ~~same~~ manner and to the ~~same~~ extent as for contempt
21 committed before the court, or the court ~~may~~ commit the person
22 upon the ~~same~~ conditions as if the doing of the forbidden act had
23 occurred with reference to the process of or in the presence of
24 the court. "

25 Section 21. A new section of the Child Support Hearing

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1 Officer Act is enacted to read:

2 "[NEW MATERIAL] CHILD SUPPORT HEARING OFFICERS--
3 APPOINTMENT-- QUALIFICATIONS. --

4 A. Child support hearing officers shall be appointed
5 by and serve at the pleasure of the secretary. Child support
6 hearing officers shall be employees of the department and shall
7 be exempt from the provisions of the Personnel Act.

8 B. Child support hearing officers shall be lawyers
9 who are licensed to practice law in this state and who have a
10 minimum of five years experience in the practice of law, with at
11 least twenty percent of that practice having been in family law
12 or domestic relations matters. Child support hearing officers
13 shall devote full time to their duties under the Child Support
14 Hearing Officer Act and shall not engage in the private practice
15 of law or in any employment, occupation or business interfering
16 with or inconsistent with the discharge of their duties as
17 full-time child support hearing officers.

18 C. Child support hearing officers shall conform to
19 the Code of Judicial Conduct as adopted by the supreme court.
20 Violation of a canon shall be grounds for dismissal of a child
21 support hearing officer. "

22 Section 22. A new section of the Child Support Hearing
23 Officer Act is enacted to read:

24 "[NEW MATERIAL] APPEALS FROM DECISION OF CHILD SUPPORT
25 HEARING OFFICER. --

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1 A. If a party or the secretary is dissatisfied with a
2 decision and order of a child support hearing officer, the party
3 or secretary may appeal to the court of appeals for further
4 relief. All such appeals shall be upon the record made at the
5 hearing and shall not be de novo. All such appeals to the court
6 of appeals shall be taken within thirty days of the date of
7 mailing or delivery of the written decision and order of the
8 child support hearing officer to the parties, and, if not so
9 taken, the decision and order are conclusive.

10 B. The procedure for perfecting an appeal under this
11 section to the court of appeals shall be as provided by the Rules
12 of Appellate Procedure.

13 C. Upon appeal, the court of appeals shall set aside
14 a decision and order of the child support hearing officer only if
15 found to be:

- 16 (1) arbitrary, capricious or an abuse of
- 17 discretion;
- 18 (2) not supported by substantial evidence in the
- 19 record; or
- 20 (3) otherwise not in accordance with the law."

21 Section 23. Section 40-4C-1 NMSA 1978 (being Laws 1990,
22 Chapter 78, Section 1) is amended to read:

23 "40-4C-1. SHORT TITLE. -- ~~[This act]~~ Chapter 40, Article 4C
24 NMSA 1978 may be cited as the "Mandatory Medical Support Act"."

25 Section 24. Section 40-4C-3 NMSA 1978 (being Laws 1990,

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1 Chapter 78, Section 3, as amended) is amended to read:

2 "40-4C-3. DEFINITIONS. -- As used in the Mandatory Medical
3 Support Act:

4 ~~[A. "court" means any district court ordering child
5 support of an obligor;]~~

6 A. "adjudicatory body" means:

7 (1) the district court when ordering child
8 support of an obligor; or

9 (2) a child support hearing officer when
10 ordering child support of an obligor and exercising jurisdiction
11 pursuant to the Child Support Hearing Officer Act;

12 B. "dental insurance coverage" means those coverages
13 generally associated with a dental plan of benefits, not
14 including medicaid coverage authorized by Title XIX of the
15 federal Social Security Act and administered by the [~~human~~
16 ~~services~~] department;

17 C. "department" means the human services department;

18 D. "employer" means any individual, organization,
19 agency, business or corporation hiring an obligor for pay;

20 E. "health insurance coverage" means those coverages
21 generally associated with a medical plan of benefits, not
22 including medicaid coverage authorized by Title XIX of the
23 federal Social Security Act and administered by the department;

24 F. "insurer" includes a group health plan as defined
25 in 29 U. S. C. 1167, a health maintenance organization as defined

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1 in Section 59A-46-2 NMSA 1978 and a nonprofit health care plan
2 organized pursuant to the provisions of Section 59A-47-4 NMSA
3 1978;

4 G. "minor child" means a child younger than eighteen
5 years of age who has not been emancipated;

6 H. "obligee" means a person to whom a duty of support
7 is owed or a person, including the department, who has commenced
8 a proceeding for enforcement of an alleged duty of support or for
9 registration of a support order, regardless of whether the person
10 to whom a duty of support is owed is a recipient of public
11 assistance; and

12 I. "obligor" means a person owing a duty of support
13 or against whom a proceeding for the enforcement of a duty of
14 support or registration of a support order is commenced."

15 Section 25. Section 40-4C-4 NMSA 1978 (being Laws 1990,
16 Chapter 78, Section 4) is amended to read:

17 "40-4C-4. MEDICAL SUPPORT--ORDER.--

18 A. The [court] adjudicatory body shall order an
19 obligor to name the minor child on behalf of whom support is owed
20 as an eligible dependent of health insurance coverage or dental
21 insurance coverage if:

22 (1) health insurance coverage or dental
23 insurance coverage [which] that meets or exceeds the minimum
24 standards required under the Mandatory Medical Support Act is not
25 available at a more reasonable cost to the obligee than to the

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1 obligor for coverage of the minor child; and

2 (2) such health insurance coverage or dental
3 insurance coverage is available to the obligor through an
4 employer or union.

5 B. The [~~court~~] adjudicatory body may consider the
6 impact of the cost of health insurance coverage or dental
7 insurance coverage on the payment of the base child support
8 amounts in determining whether such insurance coverage shall be
9 ordered.

10 C. The [~~court~~] adjudicatory body may order the
11 obligor to obtain health insurance coverage or dental insurance
12 coverage for any minor child to whom support is owed, if:

13 (1) the [~~court~~] adjudicatory body finds that
14 health insurance coverage or dental insurance coverage for the
15 minor child is not available to the obligor through an employer
16 or union; and

17 (2) the obligee does not have such health
18 insurance coverage or dental insurance coverage available at a
19 more reasonable cost than the obligor for coverage of the minor
20 child.

21 D. The [~~court~~] adjudicatory body shall require the
22 obligor to be liable for all or a portion of the medical or
23 dental expenses of the minor child that are not covered by the
24 required health insurance coverage or dental insurance coverage,
25 if:

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1 (1) the ~~[court]~~ adjudicatory body finds that the
2 health insurance coverage or dental insurance coverage required
3 to be obtained by the obligor or available to the obligee does
4 not pay all the reasonable and necessary medical or dental
5 expenses of the minor child; and

6 (2) the ~~[court]~~ adjudicatory body finds that the
7 obligor has the financial resources to contribute to the payment
8 of these medical or dental expenses.

9 E. The ~~[court]~~ adjudicatory body shall require the
10 obligor to provide health insurance coverage or dental insurance
11 coverage for the benefit of the obligee if it is available at no
12 additional cost to the obligor.

13 F. The ~~[court]~~ adjudicatory body in any proceeding
14 for the establishment, enforcement or modification of a child
15 support obligation may modify an existing order of support or
16 establish child support, as applicable, for the minor child to
17 incorporate the provisions for medical support ordered pursuant
18 to the Mandatory Medical Support Act."

19 Section 26. Section 40-4C-5 NMSA 1978 (being Laws 1990,
20 Chapter 78, Section 5) is amended to read:

21 "40-4C-5. ~~ORDER- -PROOF OF COMPLIANCE- -NOTICE. - -~~

22 A. The obligor shall provide to the obligee within
23 thirty days of receipt of effective notice of ~~[a-court]~~ an order
24 for health insurance coverage or dental insurance coverage
25 pursuant to the Mandatory Medical Support Act written proof of

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1 the obligor's compliance with that order. Compliance means
2 either that the health insurance coverage or dental insurance
3 coverage has been obtained or that a correct and complete
4 application for such coverage has been made.

5 B. The obligee shall forward a copy of the [court]
6 order for health insurance coverage or dental insurance coverage
7 issued pursuant to the Mandatory Medical Support Act to the
8 obligor's employer or union only when ordered to do so by the
9 [court] adjudicatory body or when:

10 (1) the obligor fails to provide written proof
11 of compliance with the [court] order to the obligee within thirty
12 days of the obligor's receipt of effective written notice of the
13 [court] order;

14 (2) the obligee serves by mail at the obligor's
15 last known post office address written notice on the obligor of
16 the obligee's intent to enforce the order; and

17 (3) the obligor fails to provide within fifteen
18 days after the date the obligee mailed the notice in Paragraph
19 (2) of this subsection written proof to the obligee that the
20 obligor has obtained the health insurance coverage or dental
21 insurance coverage ordered by the [court] adjudicatory body or
22 has applied for such coverage.

23 C. Upon receipt of [~~a court~~] an order for health
24 insurance coverage or dental insurance coverage pursuant to the
25 Mandatory Medical Support Act, the employer or union shall

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1 forward a copy of the order to the health insurer or dental
2 insurer, as applicable. "

3 Section 27. Section 40-4C-6 NMSA 1978 (being Laws 1990,
4 Chapter 78, Section 6, as amended) is amended to read:

5 "40-4C-6. OBLIGATIONS--EMPLOYERS AND UNIONS--INSURERS. --

6 A. Upon receipt of the [~~court~~] order for health
7 insurance coverage or dental insurance coverage pursuant to
8 Section 40-4C-5 NMSA 1978 or upon application of the obligor
9 pursuant to that order, the employer or union shall enroll the
10 minor child as an eligible dependent in the health insurance plan
11 or dental insurance plan and withhold any required premium from
12 the obligor's income or wages. If more than one health insurance
13 plan or dental insurance plan is offered by the employer or
14 union, the minor child shall be enrolled in the plan in which the
15 obligor is enrolled or the least costly plan available to the
16 obligor that meets the minimum coverage criteria required
17 pursuant to the Mandatory Medical Support Act.

18 B. In any instance in which the obligor is required
19 by [~~a court~~] an order to provide health insurance coverage or
20 dental insurance coverage for the minor child and the obligor is
21 eligible for health insurance coverage or dental insurance
22 coverage through an employer or union, the employer, union or
23 insurer shall do the following:

24 (1) permit the obligor to enroll for health
25 insurance coverage or dental insurance coverage the minor child

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1 who is otherwise eligible for coverage without regard to any
2 enrollment season restrictions;

3 (2) enroll the minor child for health insurance
4 coverage or dental insurance coverage if the obligor fails to
5 enroll the minor child upon application by the obligee or the
6 department;

7 (3) not disenroll or eliminate coverage of any
8 minor child so enrolled unless:

9 (a) the employer is provided with
10 satisfactory written evidence that the ~~[court]~~ order is no longer
11 in effect;

12 (b) ~~[that]~~ the minor child is or will be
13 enrolled in comparable health coverage that meets the coverage
14 criteria required pursuant to the Mandatory Medical Support Act
15 and that will take effect not later than the effective date of
16 the disenrollment;

17 (c) the obligor has terminated employment;
18 or

19 (d) the employer has eliminated health
20 insurance coverage or dental insurance coverage for all of its
21 employees; and

22 (4) withhold from the obligor's compensation the
23 obligor's share, if any, of premiums for health insurance
24 coverage or dental insurance coverage and to pay the share of
25 premiums to the insurer, unless otherwise provided in law or

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1 regulation.

2 C. In those instances where the obligor fails or
3 refuses to execute any document necessary to enroll the minor
4 child in the health insurance plan or dental insurance plan
5 ordered by the ~~[court]~~ adjudicatory body, the required
6 information and authorization may be provided by the department
7 or the custodial parent or guardian of the minor child.

8 D. Information and authorization provided by the
9 department or the custodial parent or guardian of the minor child
10 shall be valid for the purpose of meeting enrollment requirements
11 of the health insurance plan or dental insurance plan and shall
12 not affect the obligation of the employer or union and the
13 insurer to enroll the minor child in the health insurance or
14 dental insurance plan for which other eligibility, enrollment,
15 underwriting terms and other requirements are met. In instances
16 in which the minor child is insured through the obligor, the
17 insurer shall provide all information to the obligee that may be
18 helpful or necessary for the minor child to obtain benefits.

19 E. A minor child that an obligor is required to cover
20 as an eligible dependent pursuant to the Mandatory Medical
21 Support Act shall be considered for insurance coverage purposes
22 as a dependent of the obligor until the child is emancipated or
23 until further order of the ~~[court]~~ adjudicatory body.

24 F. In instances in which the minor child is insured
25 through the obligor, the insurer is prohibited from denying

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1 health insurance coverage or dental insurance coverage of the
2 minor child on the grounds that the minor child was born out of
3 wedlock, that the minor child is not claimed as a dependent on
4 the obligor's federal income tax return or that the minor child
5 does not reside with the obligor or reside in the insurer's
6 service area.

7 G. In instances in which the minor child is insured
8 through the obligor, the insurer is prohibited from imposing
9 requirements on the department that are different from
10 requirements applicable to an agent or assignee of any other
11 individual covered by the insurer.

12 H. In instances in which the minor child is insured
13 through the obligor, the insurer shall permit the obligee or
14 provider, with the approval of the obligee, to submit claims for
15 covered services without the approval of the obligor. The
16 insurer shall make payments on submitted claims directly to the
17 obligee or the provider."

18 Section 28. Section 40-4C-9 NMSA 1978 (being Laws 1990,
19 Chapter 78, Section 9) is amended to read:

20 "40-4C-9. AUTHORIZATION FOR CLAIMS.--The signature of the
21 custodial parent of the minor child insured pursuant to [~~a court~~
22 ~~order~~] an order of an adjudicatory body is a valid authorization
23 to the health insurer or dental insurer for purposes of
24 processing an insurance reimbursement payment."

25 Section 29. Section 40-4C-12 NMSA 1978 (being Laws 1990,

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1 Chapter 78, Section 12, as amended) is amended to read:

2 "40-4C-12. OBLIGOR LIABILITY. --

3 A. The obligor who fails to maintain the health
4 insurance coverage or dental insurance coverage for the benefit
5 of a minor child as ordered pursuant to the Mandatory Medical
6 Support Act shall be liable to the obligee for any medical and
7 dental expenses incurred from the date of the ~~court~~ order of
8 the adjudicatory body.

9 B. An obligor who receives payment from a third party
10 for the costs of medical or dental services provided to a minor
11 child and who fails to use the payment to reimburse the
12 department is liable to the department to the extent of the
13 department's payment for the services. The department is
14 authorized to intercept the obligor's tax refund to recoup
15 amounts paid. Claims for current or past due child support take
16 priority over any claims made pursuant to this subsection. Proof
17 of failure to maintain health insurance coverage or dental
18 insurance coverage as ordered constitutes a showing of increased
19 need by the obligee and provides a basis for modification of the
20 obligor's child support order.

21 C. If the department is the obligee, the obligor is
22 required to provide the department with the following information
23 concerning health insurance coverage or dental insurance
24 coverage:

- 25 (1) obligor's name and tax identification

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1 number;

2 (2) type of coverage (single or family);

3 (3) name, address and identifying number of
4 health insurance coverage or dental insurance coverage;

5 (4) name and tax identification number of other
6 individuals who are provided health insurance coverage or dental
7 insurance coverage by the obligor;

8 (5) effective period of coverage; and

9 (6) name, address and the tax identification
10 number of the employer. "

11 Section 30. Section 40-5A-1 NMSA 1978 (being Laws 1995,
12 Chapter 25, Section 1) is amended to read:

13 "40-5A-1. SHORT TITLE. -- ~~[This act]~~ Chapter 40, Article 5A
14 NMSA 1978 may be cited as the "Parental Responsibility Act". "

15 Section 31. Section 40-5A-3 NMSA 1978 (being Laws 1995,
16 Chapter 25, Section 3, as amended) is amended to read:

17 "40-5A-3. DEFINITIONS. -- As used in the Parental
18 Responsibility Act:

19 A. "applicant" means an obligor who is applying for
20 issuance of a license;

21 B. "board" means:

22 (1) the construction industries commission, the
23 construction industries division and the electrical bureau,
24 mechanical bureau and general construction bureau of the
25 construction industries division of the regulation and licensing

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1 department;

2 (2) the manufactured housing committee and
3 manufactured housing division of the regulation and licensing
4 department;

5 (3) a board, commission or agency that
6 administers a profession or occupation licensed pursuant to
7 Chapter 61 NMSA 1978;

8 (4) any other state agency to which the Uniform
9 Licensing Act is applied by law;

10 (5) a licensing board or other authority that
11 issues a license, certificate, registration or permit to engage
12 in a profession or occupation regulated in New Mexico;

13 (6) the department of game and fish;

14 (7) the motor vehicle division of the taxation
15 and revenue department; or

16 (8) the alcohol and gaming division of the
17 regulation and licensing department;

18 C. "certified list" means a verified list that
19 includes the names, social security numbers and last known
20 addresses of obligors not in compliance;

21 D. "compliance" means that:

22 (1) an obligor is no more than thirty days in
23 arrears in payment of amounts required to be paid pursuant to an
24 outstanding judgment and order for support; and

25 (2) an obligor has, after receiving appropriate

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1 notice, complied with subpoenas or warrants relating to paternity
2 or child support proceedings;

3 E. "department" means the human services department;

4 F. "judgment and order for support" means the
5 judgment entered against an obligor by the district court, ~~[or]~~ a
6 tribal court or a child support hearing officer in a case brought
7 by the department pursuant to Title IV-D of the federal Social
8 Security Act;

9 G. "license" means a liquor license or other license,
10 certificate, registration or permit issued by a board that a
11 person is required to have to engage in a profession or
12 occupation in New Mexico; "license" includes a commercial
13 driver's license, driver's license and recreational licenses,
14 including hunting, fishing or trapping licenses;

15 H. "licensee" means an obligor to whom a license has
16 been issued; and

17 I. "obligor" means the person who has been ordered to
18 pay child or spousal support pursuant to a judgment and order for
19 support. "

20 Section 32. Section 40-5A-8 NMSA 1978 (being Laws 1995,
21 Chapter 25, Section 8) is amended to read:

22 "40-5A-8. ~~[COURT]~~ ORDERS. -- As part of a judgment and order
23 for support, a district court or a child support hearing officer
24 may require the obligor to surrender any license held by him or
25 may refer the matter to the appropriate board for further

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1 action. "

2 Section 33. Section 40-6A-102 NMSA 1978 (being Laws 1994,
3 Chapter 107, Section 102, as amended) is amended to read:

4 "40-6A-102. TRIBUNAL OF STATE. -- The [~~district courts are~~
5 ~~the~~] tribunals of this state are:

6 A. the district courts for actions filed with or
7 orders issued by the courts; or

8 B. child support hearing officers employed by the
9 human services department if the department is exercising
10 jurisdiction pursuant to the Child Support Hearing Officer Act
11 and the action is filed with or the order issued by the hearing
12 officer. "

13 Section 34. Section 40-11-1 NMSA 1978 (being Laws 1986,
14 Chapter 47, Section 1) is amended to read:

15 "40-11-1. SHORT TITLE. -- [~~This act~~] Chapter 40, Article 11
16 NMSA 1978 may be cited as the "Uniform Parentage Act". "

17 Section 35. Section 40-11-2 NMSA 1978 (being Laws 1986,
18 Chapter 47, Section 2) is amended to read:

19 "40-11-2. [~~DEFINITION~~] DEFINITIONS. -- As used in the Uniform
20 Parentage Act:

21 A. "adjudicatory body" means:

22 (1) the district court if the action is filed
23 with or the order issued by the court; or

24 (2) a child support hearing officer employed by
25 the human services department if the department is exercising

1 jurisdiction pursuant to the Child Support Hearing Officer Act
2 and the action is filed with or the order issued by the hearing
3 officer; and

4 B. "parent and child relationship" means the legal
5 relationship existing between a child and his natural or adoptive
6 parents incident to which the law confers or imposes rights,
7 privileges, duties and obligations. It includes the mother and
8 child relationship and the father and child relationship. "

9 Section 36. Section 40-11-5 NMSA 1978 (being Laws 1986,
10 Chapter 47, Section 5, as amended) is amended to read:

11 "40-11-5. PRESUMPTION OF PATERNITY. --

12 A. A man is presumed to be the natural father of a
13 child if:

14 (1) he and the child's natural mother are or
15 have been married to each other and the child is born during the
16 marriage or within three hundred days after the marriage is
17 terminated by death, annulment, declaration of invalidity or
18 dissolution of marriage or after a decree of separation is
19 entered by a court;

20 (2) before the child's birth, he and the child's
21 natural mother have attempted to marry each other by a marriage
22 solemnized in apparent compliance with law, although the
23 attempted marriage is or could be declared invalid, and:

24 (a) if the attempted marriage could be
25 declared invalid only by a court, the child is born during the

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1 attempted marriage or within three hundred days after its
2 termination by death, annulment, declaration of invalidity or
3 divorce; or

4 (b) if the attempted marriage is invalid
5 without a court order, the child is born within three hundred
6 days after the termination of cohabitation;

7 (3) after the child's birth, he and the child's
8 natural mother have married or attempted to marry each other by a
9 marriage solemnized in apparent compliance with law, although the
10 attempted marriage is or could be declared invalid, and:

11 (a) he has acknowledged his paternity of
12 the child in writing filed with the vital statistics bureau of
13 the public health division of the department of health;

14 (b) with his consent, he is named as the
15 child's father on the child's birth certificate; or

16 (c) he is obligated to support the child
17 under a written voluntary promise or by ~~court~~ order of an
18 adjudicatory body;

19 (4) while the child is under the age of
20 majority, he openly holds out the child as his natural child and
21 has established a personal, financial or custodial relationship
22 with the child; or

23 (5) he acknowledges his paternity of the child
24 pursuant to Section 24-14-13 NMSA 1978 or in writing filed with
25 the vital statistics bureau of the public health division of the

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1 department of health, which shall promptly inform the mother of
2 the filing of the acknowledgment, and, within a reasonable time
3 after being informed of the filing, she does not dispute the
4 acknowledgment. In order to enforce the rights of custody or
5 visitation, a man presumed to be the father as a result of filing
6 a written acknowledgment shall seek an appropriate judicial order
7 in an action filed for that purpose. A signed voluntary
8 acknowledgment of paternity is considered a legal finding of
9 paternity, subject to the right of any signatory to rescind the
10 acknowledgment within the earlier of:

11 (a) sixty days from the date of signing;

12 or

13 (b) the date of an administrative or
14 judicial proceeding relating to the child, including a proceeding
15 to establish a support order, to which the signatory is a party.
16 After sixty days from the date of signing, the acknowledgment may
17 be challenged in court only on the grounds of fraud, duress or
18 material mistake of fact, with the burden of proof upon the
19 challenger, although legal responsibilities arising from signing
20 the acknowledgment may not be suspended during the challenge,
21 except upon a showing of good cause. Judicial or administrative
22 proceedings are not required to ratify an unchallenged
23 acknowledgment.

24 B. If two or more men are presumed under this section
25 to be the child's father, an acknowledgment by one of them may be

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1 effective only with the written consent of the other or pursuant
2 to Subsection C of this section.

3 C. A presumption under this section may be rebutted
4 in an appropriate action only by clear and convincing evidence.
5 If two or more men are presumed under this section to be the
6 father of the same child, paternity shall be established as
7 provided in the Uniform Parentage Act. If the presumption has
8 been rebutted with respect to one man, paternity of the child by
9 another man may be determined in the same action if he has been
10 made a party.

11 D. A man is presumed to be the natural father of a
12 child if, pursuant to blood or genetic tests properly performed
13 by a qualified person and evaluated by an expert, including
14 deoxyribonucleic acid (DNA) probe technique tests under the
15 Uniform Parentage Act, the probability of his being the father is
16 ninety-nine percent or higher.

17 E. The voluntary acknowledgment of paternity must be
18 recognized as a basis for seeking a support order without
19 requiring any further proceedings to establish paternity.

20 F. Full faith and credit must be given to
21 determination of paternity made by other states, including
22 acknowledgments of paternity."

23 Section 37. Section 40-11-8 NMSA 1978 (being Laws 1986,
24 Chapter 47, Section 8) is amended to read:

25 "40-11-8. JURISDICTION--VENUE.--

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1 A. ~~[The district court]~~ An adjudicatory body has
2 jurisdiction over an action brought under the Uniform Parentage
3 Act. In an adjudicatory body with jurisdiction the action may
4 also be joined with an action for dissolution of marriage,
5 annulment, separate maintenance or support.

6 B. A person who has sexual intercourse in this state
7 thereby submits to the jurisdiction of ~~[the courts]~~ an
8 adjudicatory body of this state as to an action brought under the
9 Uniform Parentage Act with respect to a child who may have been
10 conceived by that act of intercourse. In addition to any other
11 method provided by rule or statute, personal jurisdiction may be
12 acquired over such person by delivery of summons outside this
13 state by personal service or by registered mail with proof of
14 actual receipt.

15 C. The action may be brought before a child support
16 hearing officer pursuant to the procedures of the Child Support
17 Hearing Officer Act or before a district court in the county in
18 which any party resides or is found or, if the father is
19 deceased, in which proceedings for probate of his estate have
20 been or could be commenced."

21 Section 38. Section 40-11-9 NMSA 1978 (being Laws 1986,
22 Chapter 47, Section 9, as amended) is amended to read:

23 "40-11-9. PARTIES.--The child may be made a party to the
24 action provided for in Section 40-11-7 NMSA 1978. If the child
25 is a party and a minor, he shall be represented by his general

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1 guardian or a guardian ad litem appointed by the [court]
2 adjudicatory body, or both. The custodian may act as guardian
3 under this section. The [court] adjudicatory body may align the
4 parties. "

5 Section 39. Section 40-11-10 NMSA 1978 (being Laws 1986,
6 Chapter 47, Section 10) is amended to read:

7 "40-11-10. [~~PRE-TRIAL PROCEEDINGS~~] PRELIMINARY HEARING. -- As
8 soon as practicable after an action to declare the existence or
9 nonexistence of the father and child relationship has been
10 brought, and unless judgment by default has been entered, [~~an~~
11 ~~informal~~] a preliminary hearing shall be held. If the proceeding
12 is before a district court, the court may order that the hearing
13 be held before a master. The public shall be barred from the
14 hearing. A record of the proceeding or any portion of the
15 proceeding shall be kept if any party requests or the court so
16 orders. The rules of evidence shall not apply. "

17 Section 40. Section 40-11-11 NMSA 1978 (being Laws 1986,
18 Chapter 47, Section 11, as amended) is amended to read:

19 "40-11-11. [~~PRE-TRIAL~~] PRELIMINARY HEARING
20 RECOMMENDATIONS. --

21 A. On the basis of the information produced at the
22 [~~pretrial~~] preliminary hearing as provided for in Section
23 40-11-10 NMSA 1978, the judge, hearing officer or master
24 conducting the hearing shall evaluate the probability of
25 determining the existence or nonexistence of the father and child

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1 relationship [~~in a trial~~]. On the basis of the evaluation, an
2 appropriate recommendation for settlement shall be made to the
3 parties. Based upon the evaluation, the judge, hearing officer
4 or master may enter an order for temporary support consistent
5 with the child support guidelines as provided in Section
6 40-4-11.1 NMSA 1978.

7 B. If the parties accept a recommendation made in
8 accordance with Subsection A of this section, judgment shall be
9 entered accordingly.

10 C. If a party refuses to accept a recommendation made
11 in accordance with Subsection A of this section and blood tests
12 have not been taken, the [~~court~~] adjudicatory body shall require
13 the parties to submit to blood tests, if practicable.
14 Thereafter, the judge, hearing officer or master shall make an
15 appropriate final recommendation. If a party refuses to accept
16 the final recommendation, the action shall be set for [~~trial~~]
17 hearing and a party's acceptance or rejection of the
18 recommendation shall be treated as any other offer of settlement
19 with respect to its admissibility as evidence in subsequent
20 proceedings.

21 D. The child's guardian may accept or refuse to
22 accept a recommendation under this section.

23 E. The [~~informal~~] preliminary hearing may be
24 terminated and the action set for [~~trial~~] hearing if the judge,
25 hearing officer or master conducting the hearing finds it

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1 unlikely that all parties would accept a recommendation he might
2 make under Subsection A or C of this section."

3 Section 41. Section 40-11-12 NMSA 1978 (being Laws 1986,
4 Chapter 47, Section 12, as amended) is amended to read:

5 "40-11-12. BLOOD AND GENETIC TESTS. --

6 A. The ~~[court]~~ adjudicatory body may, and upon
7 request of a party shall, require the child, mother or alleged
8 father to submit to blood or genetic tests, including
9 deoxyribonucleic acid (DNA) probe technique tests.

10 B. The ~~[court]~~ adjudicatory body, upon reasonable
11 request by a party, shall order that independent tests be
12 performed by other experts qualified as examiners of blood types
13 or qualified as experts in the administration of genetic tests,
14 including deoxyribonucleic acid (DNA) probe technique tests.

15 C. In all cases, the ~~[court]~~ adjudicatory body shall
16 determine the number and qualifications of the experts. This
17 accreditation of the testing facility must be admissible without
18 the need for foundation testimony or other proof of authenticity
19 or accuracy unless an objection has been made in writing not
20 later than twenty days before a hearing on the testing results.
21 The ~~[court]~~ adjudicatory body shall admit into evidence, for
22 purposes of establishing paternity, the results of any genetic
23 test that is of a type generally acknowledged as reliable by
24 accreditation bodies designated by the secretary of human
25 services and performed by a laboratory approved by such an

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1 accreditation body unless an objection has been made in writing
2 not later than twenty days before a hearing at which the results
3 may be introduced into evidence.

4 D. If [~~a putative~~] an alleged father refuses to
5 comply with an order for testing pursuant to this section, the
6 [~~court~~] adjudicatory body shall enter a judgment of parentage
7 against him.

8 E. If the mother refuses to comply with an order for
9 testing pursuant to this section, the [~~court~~] adjudicatory body
10 may dismiss the case without prejudice. "

11 Section 42. Section 40-11-14 NMSA 1978 (being Laws 1986,
12 Chapter 47, Section 14, as amended) is amended to read:

13 "40-11-14. CIVIL ACTION. --

14 A. An action under the Uniform Parentage Act is a
15 civil action governed by the Rules of Civil Procedure for the
16 District Courts. Jury trial is not available in actions to
17 establish parentage. The mother of the child and the alleged
18 father are competent to testify and may be compelled to testify.

19 B. Testimony relating to sexual access to the mother
20 by an unidentified man at any time or by an identified man at a
21 time other than the probable time of conception is inadmissible
22 in evidence unless offered by the mother.

23 C. In an action against an alleged father, evidence
24 offered by him with respect to a man who is not subject to the
25 jurisdiction of the [~~court~~] adjudicatory body concerning his

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1 sexual intercourse with the mother at or about the probable time
2 of conception of the child is admissible in evidence only if the
3 alleged father has undergone and made available to the [court]
4 adjudicatory body blood tests, the results of which do not
5 exclude the possibility of his paternity of the child.

6 D. A default order must be entered upon a showing of
7 service of process on the defendant or any other showing required
8 by state law. "

9 Section 43. Section 40-11-15 NMSA 1978 (being Laws 1986,
10 Chapter 47, Section 15, as amended) is amended to read:

11 "40-11-15. JUDGMENT OR ORDER. --

12 A. The judgment or order of the [court] adjudicatory
13 body determining the existence or nonexistence of the parent and
14 child relationship is determinative for all purposes.

15 B. If the judgment or order [~~of the court is~~] at
16 variance with the child's birth certificate, the [court]
17 adjudicatory body shall order that a new birth certificate be
18 issued.

19 C. The judgment or order may contain any other
20 provision directed against or on behalf of the appropriate party
21 to the proceeding concerning the duty of past and future support,
22 the custody and guardianship of the child, visitation with the
23 child, the furnishing of bond or other security for the payment
24 of the judgment or any other matter within the jurisdiction of
25 the [court] adjudicatory body. The judgment or order may direct

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1 the father to pay the reasonable expenses of the mother's
2 pregnancy, birth and confinement. The ~~[court]~~ adjudicatory body
3 shall order child support retroactive to the date of the child's
4 birth pursuant to the provisions of Sections 40-4-11 through
5 40-4-11.3 NMSA 1978; provided that, in deciding whether or how
6 long to order retroactive support, the ~~[court]~~ adjudicatory body
7 shall consider:

8 (1) whether the alleged or presumed father has
9 absconded or could not be located; and

10 (2) whether equitable defenses are applicable.

11 D. A determination of parentage and adjudication of
12 support is binding on:

13 (1) a signatory on an acknowledgment of
14 paternity;

15 (2) a nonresident party subject to the ~~[court's]~~
16 jurisdiction of the adjudicatory body pursuant to Section
17 40-6A-201 NMSA 1978; and

18 (3) the child, if:

19 (a) the determination was based on an
20 acknowledgment of paternity and the acknowledgment is consistent
21 with the results of genetic testing;

22 (b) the child was a party or was
23 represented in the proceeding by a guardian ad litem;

24 (c) there is a stipulation or admission in
25 the final order that the parties are the parents of the child; or

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1 (d) in a proceeding to dissolve a marriage
2 or establish support, a final order expressly identified the
3 child as a "child of the marriage", "issue of the marriage",
4 "child of the parties" or similar words that indicate the parties
5 are the parents of the child and, if applicable, the [court]
6 adjudicatory body had personal jurisdiction over any nonresident
7 party pursuant to Section 40-6A-201 NMSA 1978.

8 E. Support judgments or orders ordinarily shall be
9 for periodic payments which may vary in amount. In the best
10 interest of the child, a lump-sum payment or the purchase of an
11 annuity may be ordered in lieu of periodic payments of support;
12 provided, however, nothing in this section shall deprive a state
13 agency of its right to reimbursement from an appropriate party
14 should the child be a past or future recipient of public
15 assistance.

16 F. In determining the amount to be paid by a parent
17 for support of the child, a court, child support hearing officer
18 or ~~master~~ shall make such determination in accordance with the
19 provisions of the child support guidelines of Section 40-4-11.1
20 NMSA 1978.

21 G. Bills for pregnancy, childbirth and genetic
22 testing are admissible as evidence without requiring
23 third-party foundation testimony and constitute prima facie
24 evidence of amounts incurred."

25 Section 44. Section 40-11-16 NMSA 1978 (being Laws 1986,
. 145805. 1ms

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1 Chapter 47, Section 16, as amended) is amended to read:

2 "40-11-16. COSTS. -- The [court] adjudicatory body may order
3 reasonable fees of counsel, experts, the child's guardian and
4 other costs of the action and [~~pre-trial proceedings~~] preliminary
5 hearings, including blood or genetic tests, to be paid by any
6 party in proportions and at times determined by the [court]
7 adjudicatory body. The [court] adjudicatory body may order the
8 proportion of any indigent party to be paid from [court] funds of
9 the adjudicatory body. "

10 Section 45. Section 40-11-17 NMSA 1978 (being Laws 1986,
11 Chapter 47, Section 17) is amended to read:

12 "40-11-17. ENFORCEMENT OF JUDGMENT OR ORDER. --

13 A. If existence of the father and child relationship
14 is declared or paternity or a duty of support has been
15 acknowledged or adjudicated under the Uniform Parentage Act or
16 under prior law, the obligation of the father may be enforced in
17 the same or other proceedings by any interested party.

18 B. The [court] adjudicatory body may order support
19 payments to be made to the mother; the clerk of the court; or a
20 person, corporation or agency designated to collect or administer
21 such funds for the benefit of the child, upon such terms as the
22 [court] adjudicatory body deems appropriate.

23 C. Willful failure to obey the judgment or order of
24 the [court] adjudicatory body is a civil contempt [~~of the court~~].
25 All remedies for the enforcement of judgments apply. "

. 145805.1ms

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1 Section 46. Section 40-11-18 NMSA 1978 (being Laws 1986,
2 Chapter 47, Section 18) is amended to read:

3 "40-11-18. MODIFICATION OF JUDGMENT OR ORDER. -- The [court]
4 adjudicatory body has continuing jurisdiction to modify or revoke
5 a judgment or order for future support. "

6 Section 47. Section 40-11-19 NMSA 1978 (being Laws 1986,
7 Chapter 47, Section 19) is amended to read:

8 "40-11-19. RIGHT TO COUNSEL--FREE TRANSCRIPT ON APPEAL. --

9 A. At the [~~pre-trial~~] preliminary hearing and in
10 further proceedings, any party may be represented by counsel.
11 The [court] adjudicatory body shall appoint counsel for any party
12 who is unable to obtain counsel for financial reasons if, in the
13 [~~court's~~] discretion of the adjudicatory body, appointment of
14 counsel is required in the interest of justice.

15 B. If a party is financially unable to pay the cost
16 of a transcript, the [court] adjudicatory body shall furnish on
17 request a transcript for purposes of appeal. "

18 Section 48. Section 40-11-20 NMSA 1978 (being Laws 1986,
19 Chapter 47, Section 20) is amended to read:

20 "40-11-20. HEARINGS AND RECORDS--CONFIDENTIALITY. --
21 Notwithstanding any other law concerning public hearings and
22 records, any hearing or trial held under the provisions of the
23 Uniform Parentage Act may be held in closed [court] session
24 without admittance of any person other than those necessary to
25 the action or proceeding. The [court] adjudicatory body may

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1 order that certain papers and records pertaining to the action or
2 proceeding, whether part of the permanent record of the [~~court~~]
3 adjudicatory body or any other file maintained by the state or
4 elsewhere, are subject to inspection only upon consent of the
5 [~~court~~] adjudicatory body; provided, however, nothing in this
6 section shall infringe upon the right of the parties to an action
7 or proceeding to inspect the [~~court~~] record of the adjudicatory
8 body. "

9 Section 49. Section 40-11-22 NMSA 1978 (being Laws 1986,
10 Chapter 47, Section 22) is amended to read:

11 "40-11-22. BIRTH RECORDS. --

12 A. Upon order of [~~a court of this state~~] an
13 adjudicatory body or upon request of a court of another state,
14 the vital statistics bureau of the public health [~~services~~]
15 division of the department of health [~~and environment department~~]
16 shall prepare a new certificate of birth consistent with the
17 findings of [~~the court~~] an adjudicatory body and shall substitute
18 the new certificate for the original certificate of birth.

19 B. The fact that the father and child relationship
20 was declared after the child's birth shall not be ascertainable
21 from the new certificate, but the actual place and date of birth
22 shall be shown.

23 C. The evidence upon which the new certificate was
24 made and the original birth certificate shall be kept in a sealed
25 and confidential file and be subject to inspection only upon

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1 order of [~~the court~~] an adjudicatory body and consent of all
2 interested parties, or in exceptional cases only upon an order of
3 the court for good cause shown. "

4 Section 50. TEMPORARY PROVISION--TRANSFER. --On the
5 effective date of this act, all personnel, budgets, funds,
6 appropriations, equipment and other property of child support
7 hearing officers or the district courts and used to administer
8 the Child Support Hearing Officer Act shall be transferred from
9 the district courts to the human services department.

10 Section 51. REPEAL. --Sections 40-4B-4 through 40-4B-9 NMSA
11 1978 (being Laws 1988, Chapter 127, Sections 4 through 9, as
12 amended) are repealed.

13 Section 52. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is July 1, 2003.

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